

MEMO ENDORSED

Shruti Tewarie
646-927-5531 direct
stewarie@foleyhoag.com

November 13, 2019

Via ECF

Honorable Katherine Polk Failla, U.S.D.J.
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, New York, NY 10007

Re: *National Fire Protection Association, Inc. v. Swets Information Services Private Limited et al.*, Case No. 1:18-cv-06029-KPF

Dear Judge Failla:

Pursuant to Local Rule 37.2 of the Local Rules of the United States District Court for the Southern District of New York (the “Local Rules”) and Rule 3C of Your Honor’s Individual Rules of Practice in Civil Cases, we write on behalf of plaintiff National Fire Protection Association, Inc. (“NFPA”) to request an informal conference regarding a discovery dispute that has arisen between NFPA and defendants Amish Gupta, Rikshit Sahni and Arun Anand, who each reside in Canada and are represented by the same counsel, Mr. Michael Steger, Esq. in New York (collectively, the “Canadian Defendants”).

Specifically, NFPA seeks an order to compel defendants Amish Gupta (“Mr. Gupta”) and Arun Anand (“Mr. Anand”) to travel to New York for their depositions in this matter. In the alternative, pursuant to Local Rule 30.1, NFPA requests an order compelling Mr. Gupta and Mr. Anand to pay the expenses, including reasonable counsel fees, for the attendance of one of NFPA’s attorneys for their depositions in Canada. NFPA also seeks a protective order to quash the Fed. R. Civ. P. 30(b)(6) deposition notice issued by the Canadian Defendants to NFPA for lack of reasonable notice, and have the notice re-issued for a date that provides reasonable notice to NFPA. As the basis for this request, NFPA states as follows:

Depositions of Defendants Amish Gupta and Arun Anand

On November 1, 2019, NFPA issued a notice of deposition for Mr. Gupta to appear for his deposition at counsel for NFPA’s offices in New York today, November 13, 2019. NFPA seeks to depose Mr. Gupta because the initial disclosures as well as documents produced by the Canadian Defendants show that Mr. Gupta has knowledge of the NFPA publications sold on all of the storefronts operated by the Canadian Defendants, as well as the source of these publications in India (the “Source”). In fact, documents produced by the Canadian Defendants show that Mr. Gupta was previously in business with one of the directors of the Source, who is a defaulting defendant in this action. Despite repeated requests from NFPA for a response, Mr. Steger waited for almost a week, until November 7, 2019 to inform NFPA’s counsel that he was unavailable on November 13, 2019 and also that Mr. Gupta

would not appear for a deposition in New York. Subsequently, NFPA attempted to coordinate a new date for Mr. Gupta's deposition, and given that the deadline for the close of fact discovery is fast approaching, attempted to agree upon a location in Canada to depose Mr. Gupta, noting however that Mr. Gupta should pay the fees for NFPA's counsel to take the deposition in Canada pursuant to Local Rule 30.1. At the time, it was unclear to NFPA whether Mr. Gupta resides in Toronto or Edmonton, Canada.

Mr. Steger has not provided a new date for Mr. Gupta's deposition, but has confirmed that Mr. Gupta resides in Toronto. Mr. Steger has also advised that Mr. Anand, located in Edmonton, is a more appropriate person to be deposed by NFPA because Mr. Anand allegedly is more knowledgeable regarding the Canadian Defendants' sales of NFPA books. Taking Mr. Steger's suggestion under advisement, NFPA attempted to get new deposition dates for both Mr. Gupta and Mr. Anand, noting that the depositions could take place on the same day and expressing its willingness to even schedule the depositions outside of the fact discovery deadline to accommodate Mr. Steger, Mr. Gupta, and Mr. Anand's schedules. Yet, as of today, Mr. Steger has still not provided any possible dates for either Mr. Gupta or Mr. Anand's depositions, and has stated that his clients will not appear for a deposition until NFPA produces all documents responsive to documents requests served by the Canadian Defendants.¹

On Monday, November 11, 2019, counsel for NFPA and Mr. Steger held a meet and confer over telephone to attempt to resolve their disagreement regarding the dates and locations for Mr. Gupta and Mr. Anand's depositions. During the telephone call, the parties also engaged in settlement discussions, which, if successful, could have obviated the need for NFPA to depose Mr. Gupta and/or Mr. Anand. However, it has now become apparent that these discussions were simply a delay tactic by the Canadian Defendants so that discovery would close without depositions, given their continued refusal to provide alternative dates for Mr. Gupta and Mr. Anand's depositions, coupled with their failure to engage in meaningful settlement discussions.

NFPA is entitled to depose both Mr. Anand and Mr. Gupta, given that Mr. Gupta appears to have direct ties to the Source, and that the Canadian Defendants claim that Mr. Anand is more knowledgeable regarding the Canadian Defendants' sale of NFPA publications. Both Mr. Anand and Mr. Gupta should be compelled to come to New York for their depositions. Their counsel, Mr. Steger, is located in New York. Furthermore, both defendants marketed their publications, including NFPA publications, to consumers in New York. *See Buzzeo v. Bd. of Educ., Hempstead*, 178 F.R.D. 390, 392 (E.D.N.Y. 1998) (party that notices the deposition "usually has the right to choose the location"); *Mill-Run Tours, Inc. v. Khashoggi*, 124 F.R.D. 547, 550 (S.D.N.Y. 1989) (ordering defendants to travel to New York for depositions, noting reasons such as cost, litigation efficiency, and convenience). To this end, NFPA has issued deposition notices for both Mr. Gupta and Mr. Anand to appear in New York on Monday, November 18, 2019, which is the current deadline for the parties to complete fact discovery.

¹ To date, NFPA has produced 1,547 pages of documents to the Canadian Defendants and have advised Mr. Steger that to the extent NFPA locates additional documents that are response his clients' requests, those will be produced.

Alternatively, if Your Honor holds that the depositions should take place in Canada, NFPA requests that they take place in Toronto, where Mr. Gupta resides, and that Mr. Anand be required to travel to Toronto from Edmonton. NFPA can then depose both defendants on the same day in the same location, thus reducing the time and expense involved. In this case, NFPA would be willing to cover its own expenses.

However, if Your Honor holds that the defendants must be deposed at separate locations pursuant to where they reside, then NFPA will need to budget for at least three days of travel for its counsel, including one day for Mr. Anand's deposition in Edmonton, one day for Mr. Gupta's deposition in Toronto, and at least half a day for travel between those cities. In that case, pursuant to Local Rule 30.1, Mr. Gupta and Mr. Anand should pay the expenses, including counsel fees, for one of NFPA's attorneys to take these depositions at two separate locations in Canada, especially given that the Canadian Defendants' persistent failure to provide alternative dates for Mr. Gupta and Mr. Anand's depositions have increased the cost of NFPA's travel. *See In re Fosamax Prods. Liab. Litig.*, No. 1:06-MD-1789 (JFK) (JCF), 2009 U.S. Dist. LEXIS 27209, at *32 (S.D.N.Y. Mar. 4, 2009) (Rule 30.1 creates presumption that party requesting that deposition be taken abroad should bear the associated costs); *Hoff v. WPIX, Inc.*, No. 11 Civ. 1591, 2012 U.S. Dist. LEXIS 140696 (S.D.N.Y. Sept. 21, 2012) (defendants ordered to pay half of plaintiff's counsel deposition travel fees where defendants' delay drove up these travel costs).

Fed. R. Civ. P. 30(b)(6) Deposition of NFPA

On November 8, 2019, the Canadian Defendants issued a Fed. R. Civ. P. 30(b)(6) deposition notice to NFPA for a deposition on November 15, 2019 to be held in New York. However, one week is insufficient to meet the reasonable notice requirement set forth in Fed. R. Civ. P. 30(b)(1), given that the Canadian Defendants are seeking to depose NFPA on nine different lines of inquiry, and NFPA is headquartered in Massachusetts and would need to arrange for travel for its Fed. R. Civ. P. 30(b)(6) designee who would need to get up to speed on the various deposition topics. *See In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 320, 327 (N.D. Ill. 2005) (finding ten business days insufficient notice). Accordingly, NFPA requests that the Court issue a protective order to quash the Fed. R. Civ. P. 30(b)(6) deposition notice issued by the Canadian Defendants to NFPA for lack of reasonable notice, and require them to re-issue it for a date that provides reasonable notice.

NFPA respectfully requests that the Court hold a conference to address these issues. In addition, because the deadline to complete fact discovery is currently set for Monday, November 18, 2019, and assuming that the parties are unable to resolve their dispute by then, NFPA also respectfully requests that the Court either extend the fact discovery deadline for the purposes of taking Mr. Gupta and Mr. Anand's depositions, or order that these depositions may take place after fact discovery closes.

Respectfully submitted,


Shrutih Tewarie

The Court is in receipt of Plaintiff's letter regarding several discovery disputes with Defendants. (Dkt. #278). Given the deadline for the close of fact discovery on November 18, 2019, the Court ORDERS Defendants to respond to Plaintiff's letter by 12:00 p.m. on November 15, 2019.

Dated: November 13, 2019
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE